

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROB GRAHAM THORNTON,

Defendant and Appellant.

C081617

(Super. Ct. No. 62141555)

Appointed counsel for defendant Rob Graham Thornton asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the judgment.

FACTS AND PROCEEDINGS

We provide the following brief description of the facts and procedural history of the case pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.

On October 18, 2015, off-duty Sacramento County Sheriff's Deputy Spencer Wright was stopped at an intersection when he noticed defendant on the sidewalk. Wright made eye contact with defendant, who said, "What are you looking at," used profanity, and walked briskly toward Wright's car despite being told by Wright to get out of the street. When Wright got out of his car, defendant ran back to the curb. As Wright continued to wait for the light to turn green, defendant approached again, making sexual gestures toward Wright and Wright's wife who was a passenger in the car. Again, Wright stepped out of the car, identified himself as a police officer, and told defendant to get back on the sidewalk. Defendant ran back to the sidewalk. Wright got back into his car and saw defendant in the rearview mirror throwing something toward the car. Wright drove through the intersection and turned into a gas station as his wife called 911.

At the gas station, Deputy Wright got out of his car and was about to pay for gas when he saw defendant running across the intersection to a gas station directly across the street. After a few seconds, defendant ran "full speed" directly towards Wright holding a rock in his hand. As defendant got closer, he raised the hand with the rock in it above his head. Fearing for his own safety and the safety of his wife, Wright pulled out his off-duty weapon, pointed it at defendant, and told defendant to drop the rock. When defendant saw the gun, he immediately turned and ran out of sight, dropping the rock along the way.

Defendant was charged by criminal complaint with assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1); unless otherwise set forth, statutory references that follow are to this code.) Additional allegations were subsequently stricken on the People's motion.

Following a jury trial, defendant was convicted as charged. The trial court sentenced defendant to the middle term of three years in state prison, awarded him 289 days of presentence custody credits (145 actual days plus 144 days of conduct credits), and imposed fees and fines.

Defendant filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. To date, defendant has not filed a supplemental brief. Having undertaken an examination of the entire record pursuant to *Wende*, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

HULL, Acting P. J.

We concur:

BUTZ, J.

MAURO, J.